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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 18-2604 JGB (SHKx)**	Date	April 11, 2020
Title	***Ernesto Torres, et al. v. United States Department of Homeland Security, et al.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter
Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: Order (1) GRANTING Plaintiffs' Ex Parte Application for Temporary Restraining Order (Dkt. No. 127) (IN CHAMBERS)

Before the Court is Plaintiffs' ex parte application for a temporary restraining order. ("Application," Dkt. No. 127.) The Court held a hearing on this matter on April 2, 2020 and April 8, 2020. After considering the oral argument of the parties, and the papers filed in support of and in opposition to the matter, the Court GRANTS the Application.

I. BACKGROUND

A. Procedural Background

On December 14, 2018 Plaintiffs Jason Nsinano ("Nsinano"), Desmond Tenghe, Ernesto Torres, American Immigration Lawyers Association ("AILA"), and Immigration Lawyers Association ("Imm Def") filed a putative class action complaint against Defendants. ("Complaint," Dkt. No. 1.) Plaintiffs filed a first amended complaint on February 28, 2019. ("FAC," Dkt. No. 62.) Plaintiffs' FAC alleges six causes of action related to the detention of individual plaintiffs at Immigration and Customs Enforcement ("ICE") contract detention facilities in the southern California region and to the entity defendants' access to the detainees:[1] (1) violation of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1229a(b)(4)(A)-(B),

[1] On July 8, 2019, the parties stipulated to dismiss Defendant Orange County Sheriff's Department ("OCSD"). (Dkt. No. 88.)

1362; (2) violation of the Due Process Clause of Fifth Amendment of the U.S. Constitution ("procedural due process claim"); (3) violation of the Due Process Clause of the Fifth Amendment of the U.S. Constitution ("substantive due process claim"); (4) violation of the First Amendment of the U.S. Constitution, on behalf of AILA and Imm Def; (5) violation of the First Amendment of the U.S. Constitution, on behalf of individual Plaintiffs; and (6) violation of the Administrative Procedure Act ("APA"), as to Defendant ICE. Plaintiffs seek declaratory and injunctive relief, including that Defendants undertake measures to improve conditions of confinement. (FAC at 63-64.)

On October 24, 2019, the Court denied a motion to dismiss by Defendants U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Kirstjen M. Nielsen, Ronald D. Vitiello, and David Marin ("Federal Defendants") and granted in part and denied in part a motion to dismiss by Defendant GEO Group, Inc. ("GEO"). ("MTD Order," Dkt. No. 101.)

Plaintiffs filed the Application[2] on March 26, 2020, and included in support of the TRO the following documents:

- Declaration of Munmeeth Soni, ("Soni Declaration," Dkt. No. 127-4 (attaching Exhibit A));
- Declaration Kate Voigt, ("Voigt Declaration," Dkt. No. 127-5 (attaching Exhibits A to C));
- Declaration of Chelsea Bell, ("Bell Declaration," Dkt. No. 127-6);
- Declaration of Katrina Bleckley, ("Bleckley Declaration," Dkt. No. 127-7 (attaching Exhibits A and B));
- Declaration of Elizabeth Hercules-Paez, ("Hercules-Paez Declaration," Dkt. No. 127-8);
- Declaration of Karlyn Kurichety, ("Kurichety Declaration," Dkt. No. 127-9);
- Declaration of Zoe McKinney, ("McKinney Declaration," Dkt. No. 127-10 (attaching Exhibits A and B));
- Declaration of Ernesto Torres, ("Torres Declaration," Dkt. No. 127-11); and
- Declaration of Jason Nsinano, ("Nsinano Declaration," Dkt. No. 127-12).

Federal Defendants opposed the Application on March 27, 2020, ("Opposition," Dkt. No. 129), and included in support of the Opposition the Declaration of Gabriel Valdez, ("Valdez Declaration," Dkt. No 129-1). GEO joins in and adopts the Opposition. (Dkt. No. 130.) On March 31, 2020, Plaintiffs filed a reply, ("Reply," Dkt. No 134), which included four supplemental declarations. ("Bleckley Declaration II," Dkt. No. 134-2; "Kurichety Declaration II," Dkt. No. 134-3; "Hercules Paez Declaration II," Dkt. No. 134-4; "McKinney Declaration II," Dkt. No. 134-5.)

[2] Citations to the TRO shall be to the ECF-generated page numbers of Dkt. No. 127-1, because Plaintiffs' memorandum does not include page numbers.

The Court held a hearing on April 2, 2020, and asked the parties to submit supplemental declarations. ("Plaintiffs' Supplement," Dkt. No. 138 (attaching three declarations and supporting Exhibits); "Defendants' Supplement," Dkt. No. 139 (attaching "Valdez Declaration II," Dkt. No. 139-1).) The Court held a second hearing on April 8, 2020, after which the parties submitted supplemental filings. (Dkt. No. 143, (attaching "Valdez Declaration III" as Exhibit A); Dkt. No. 142, (attaching "Soni Declaration II," Dkt. No. 142-1, and "Kavanagh Declaration," Dkt. No. 14-2).)

B. Facts

On March 11, 2020, the World Health Organization declared the novel coronavirus ("COVID-19") outbreak a global pandemic. Two days later, the President declared a national emergency. 2020 WL 1227634, at *1. As of the writing of this order, more persons have tested positive for COVID-19 in the United States than in any other country. More than 18,000 deaths have been reported in the country. Many tens of thousands of deaths are expected in the coming weeks.

Before the pandemic, Plaintiffs alleged extensive obstacles to attorney-client communication and visitation at Adelanto ICE Processing Center ("Adelanto"), an immigration detention facility operated by GEO under contract with ICE, located in San Bernardino County, and that houses up to 1,900 individuals. (FAC ¶¶ 85, 88-90.) Those factual allegations are summarized in the Court's MTD Order. (MTD Order at 2-3.)

Since the filing of the FAC, national, state, and local governments have ordered social distancing and other mitigation measures to prevent the spread of COVID-19, which is highly contagious and for which there is no known cure. The Application contends that the COVID-19 response at Adelanto effectively prevents attorney communication with the detained, in violation of their constitutional and statutory rights. In support of the Application, Plaintiffs include sixteen declarations from attorneys and Adelanto detainees regarding both pre- and mid-pandemic conditions. In response, Defendants argue Plaintiffs' evidence is inadmissible,[3] and attach the Valdez Declarations, from the ICE Officer in Charge at Adelanto.

[3] The Opposition lambasts Plaintiffs for relying on "inadmissible hearsay" and erroneous assumptions regarding COVID-19 protocols in place at Adelanto. (Opp'n at 1.) First, the Court finds most of Plaintiffs' declarations to be based on personal knowledge of obstacles the declarants encountered. Second, to the extent that the Court relies on objected-to evidence, the objections are overruled. Capitol Records, LLC v. BlueBeat, Inc., 765 F. Supp. 2d 1198, n.1 (C.D. Cal. 2010). "District courts, though, 'may give . . . inadmissible evidence some weight . . . [to] prevent[ ] irreparable harm before trial.'" Weride Corp. v. Kun Huan, 2019 WL 1439394, at *5 (N.D. Cal. Apr. 1, 2019) (quoting Johnson v. Couturier, 572 F.3d 1067, 1083 (9th Cir. 2009)). For the purposes of this opposed Application, "evidentiary issues 'properly go to weight rather than admissibility.'" Id. (quoting Go Daddy Operating Co., LLC v. Ghaznavi, 2018 WL 1091257, at *14 (N.D. Cal. Feb. 28, 2018). Thus, the Court takes the objections under advisement in considering the Application.

1. Pre-Pandemic Conditions and Obstacles to Communication

Under pre-COVID-19 Adelanto policies, which remain in place during the pandemic, Attorneys have no way to call detainees, and must leave messages with GEO staff members, who do not reliably relay messages to clients. (Soni Decl. ¶ 19; Bell Decl. ¶ 13.) Detainees, for their part, have limited phone access but struggle to call attorneys and to leave messages, because of a "positive acceptance" requirement that prevents leaving voicemail or navigating phone menus. (Soni Decl. ¶ 20; Bell Decl. ¶¶ 14-15.) When detainees do call attorneys, it is often outside of business hours and on the weekends, because of long phone lines, lockdowns, and limited outside-of-cell hours. (Bell Decl. ¶ 16.)

For example, one of Adelanto's non-protective-custody dormitories consists of a common room and about eighty detainees in four-person cells, who line up to share seven telephones, some of which do not function properly. (Sinagwana Decl. ¶ 9; but see (Valdez Decl. ¶ 11 (stating there are 12 telephones per housing unit which are "rarely out of order")).) In protective custody, conditions are more severe. Detainees are alone in their cells for 22 hours a day, and must shower, purchase items at commissary, and make phone calls within a span of one or two hours, which may not be during business hours. (Sinagwana Decl. ¶¶ 12-14.) In one protective custody unit, detainees shared three phones, one of which was malfunctioning, and not everyone could make a call within the time allotted. (Id.)

In protective and non-protective custody alike, the common area calls are not confidential and the lines are not clear. (Id. ¶ 18.) An automated message indicates the call may be monitored or recorded, and phones are within earshot of other detainees. (Soni Decl. ¶ 21; Bell Decl. ¶ 19; Bleckley Decl. ¶ 19.) The call connection is poor, with static and background noise distorting the line. Call participants often have to repeat themselves. (Bell Decl. ¶ 17.) Calls are expensive, (Torres Decl. ¶ 6), and may be cut off for insufficient funds, (Soni Decl. ¶ 23).

Detainees have rarely been able to secure free confidential legal calls outside of the common area, and in such cases had to request the call for weeks, using inconsistent procedures. (Soni Decl. ¶¶ 23, 24; Bell Decl. ¶¶ 20-21) Plaintiffs are not aware of a procedure for attorneys to initiate a confidential legal call. (Hercules-Paez ¶¶ 4-7, 9-13; Kurichety Decl. ¶ 3.)

As a result of these obstacles, Imm Def attorneys frequently resorted to in-person visits, which present additional challenges, including the inability to schedule the visits in advance, long wait periods, and lack of confidentiality in visitation rooms. (Soni Decl. ¶ 29.) An attorney might need 10-15 hours of in-person meetings to gather background information for a client applying for asylum or withholding from removal. Extended conversations are necessary to prepare clients for questioning by the Immigration Judge and make clients comfortable with revealing legally relevant traumatic episodes and personal details. (Bell Decl. ¶¶ 29-30.)

To satisfy demanding evidentiary standards in immigration proceedings, attorneys work with clients to identify corroborating evidence, and they sometimes present submissions between 500 and 700 pages long. (Katrina Bleckley Decl. ¶ 17.) However, available channels of secure

communication, such as mail, are exceedingly slow, and Imm Def has not been able to email or fax confidential legal materials to clients. (Soni Decl. ¶¶ 26-27.) Detainees cannot access email. (Id.)

Another obstacle to representation is posed by the inaccessibility of ICE Deportation Officers ("DOs"), who: (1) approve non-attorney visits, for example by interpreters or physical and mental health evaluators; (2) provide access to medicine and identifying documents; (3) process emergency requests for parole; and (4) coordinate deportation. (App. at 17.) Although AILA has been able to obtain DO contact information in other regions, Adelanto DOs do not provide their phone numbers or email addresses. (Soni Decl. ¶¶ 38-40; Voigt Decl. ¶ 4.) Compounding the difficulty, Attorneys cannot readily determine which DO is assigned their client's case, because DOs rotate dockets frequently. (Hercules-Paez Decl. ¶ 6; Kurichety Decl. ¶ 10; Valdez Decl. ¶ 25.) DOs have claimed they cannot access the files of cases to which they are not assigned, and cannot relay messages to other DOs. (Bell Decl. ¶¶ 38-39.) Nor will DOs meet with attorneys who ask to meet in person. (Id.) The only way to reach a DO is to call a main line, and ask to be transferred to a specific DO. (Bell Decl. ¶¶ 36, 38.) However, DOs rarely answer, and attorneys' messages go unreturned. (Id.) From December 2018 to July 2019, the voicemail system did not work at all. (Id.) In another instance, an attorney spent nearly a month attempting to contact a DO, before she could obtain her client's notarized signature on an immigration-neutral plea form for a state criminal case. (Id. ¶ 40.)

2. COVID-19 Policies Affecting Attorney-Client Communication

Plaintiffs argue that Defendants' response to COVID-19 leaves in place the above obstacles and further obstructs attorney-client communication. Defendants counter that GEO has taken reasonable steps to facilitate communication under the circumstances.

On March 24, 2020 ICE's published policy regarding visitation provided that attorneys may be subject to screening or required to wear personal protective equipment ("PPE"), including N-95 masks, eye protection, and gloves. (McKinney Decl. ¶ 2, Ex. A.) ICE updated the guidance later that day and noted Skype or teleconference options should be offered first, if available, and that contact legal visitation would be allowed with PPE and screening. (Id. ¶ 5, Ex. B ("if the attorney believes the legal visit requires contact, the facility should permit the visit with the appropriate guidelines it has established.").)

Plaintiffs argue that despite this revised guidance, Adelanto is essentially blocking attorney visits under any circumstances. (Id. ¶ 8.) Attorneys must provide their own PPE, including goggles, for any visit. (Bell Decl. ¶ 6; Bleckley Decl. ¶ 22.) During non-contact visits at Adelanto, attorney and client are separated by plexiglass, so it is not possible to share documents or obtain client signatures. (Bell Decl. ¶ 10; Bleckley Decl. ¶¶ 6-7.) Plaintiffs argue the new restrictions, in combination with nationwide shortages of PPE, effectively ban attorney visits, and coupled with prior obstacles, prevent Imm Def staff attorneys from representing their clients. (Bell Decl. ¶ 42; Bleckley Decl. ¶ 31.)

Defendants present a slightly different picture. They state that as of March 27, 2020, contact legal visitation is permitted 24/7, "if the attorney believes the legal visit requires contact." (Valdez Decl. ¶ 8.) They state that for contact attorney visits, GEO provides surgical masks to the detainee. (Id. ¶ 10.) Plaintiffs dispute this account, and provide examples of attorneys with full PPE being denied contact visits. (Bleckley Decl. II ¶ 7.) In their supplemental filing, Defendants state that just two contact visits, with no plexiglass barrier, have been allowed from March 13 to April 2, 2020. (Valdez Decl. II ¶ 6.) Defendants do not state how many non-contact visits have been allowed.

Defendants also state that detainees have access to dayrooms, telephones, law library computers, and tablets on a 24-hour basis. (Valdez Decl. ¶ 11.) They explain that detainee counts are the only interruption to this access, and that dayroom and telephone availability is not impacted by COVID-19. (Id.) Defendants state Adelanto is using attorney visit and asylum interview rooms to facilitate legal calls and there is no time or numeric limit on the calls. (Id. ¶ 12.) In light of the pandemic, ICE's communications provider, Talton Communications, provides two free five-minute calls on Monday, and again on Thursdays. (Id. ¶ 13.) Defendants also clarify that the positive acceptance requirement can be removed for calls to any phone number. (Id. ¶ 15.) In addition, the facility has 232 tablets for all detainees which can be used to call attorneys, and tablet access has been increased from 14 hours a day to 24 hours a day.[4] (Id. ¶ 14.)

Plaintiffs argue that despite the near impossibility of visitation, Adelanto has not significantly relaxed its pre-pandemic limitations on telephonic communications. (Bleckley Decl. ¶ 18.) An attorney asked if detainees could access free and confidential calls, and the GEO staff person replied, "we don't do that." (Kurichety Decl. ¶¶ 5-6.) One attorney asked how to schedule a confidential phone call, and was informed she could not submit such a request. (Id. ¶ 16.) Defendants respond that a detainee can submit a free call request by using a "kite," and at present attorneys must schedule a call through ICE. (Valdez Decl. II ¶ 8.) Defendants state that approximately 30 call requests have been approved in the last two weeks, for Adelanto's nearly 1900 detainees. (Valdez Decl. III ¶ 8.)

Challenges with DO communication continue during the pandemic. Imm Def's point person for DO communication states she has attempted to communicate with DOs regarding clients at risk of COVID-19 infection, but cannot reach them. (Soni Decl. ¶¶ 38-40; see also Bell Decl. ¶¶ 36-37.) Non-attorneys, such as translators or medical evaluators, can only meet detainees with DO approval. (Bell Decl. ¶ 37.) However DOs are not reliably answering phones or responding to messages. (Id.) Non-attorney visits have been entirely suspended, and so

[4] Attorney Plaintiffs counter that GEO staff has not provided information on how to set up these calls, that attorneys have not successfully received videocalls, and that such calls are prohibitively expensive. (Kurichety Decl. II ¶ 5; Hercules-Paez Decl. II ¶ 4; Bleckley Decl. II ¶¶ 11-12.) Previously, Officer Valdez informed an attorney by email that "the tablets are only operable in the housing units in the main room of the dorms. There is no manner or process by which they may be used in a confidential setting." (Bell Decl. II ¶ 10, Ex. A.)

medical and psychological evaluations that could assist in immigration proceedings are not permitted. (Bleckley Decl. ¶¶ 26-29.) Defendants do not dispute this account, but argue that due to rotating dockets, DO information becomes quickly outdated. In case of an emergency, they say it is the DO who will reach out to the attorney. (Valdez Decl. ¶ 25.)

The conditions in each unit at Adelanto are disputed or are rapidly changing. Plaintiffs state that Adelanto West, blocks 4 and 5, and the women's unit were recently under "quarantine." (Soni Decl. ¶ 16; Bell Decl. ¶ 16.) Defendants respond that the female housing units are not "cohorted" at this time, and that only one men's unit is cohorted. (Valdez Decl. ¶ 23; Valdez Decl. II ¶ 25.) The parties also submit conflicting accounts of whether "quarantined" or "cohorted" units permit detainees to move about freely and make calls from common room phones.

Bond hearings at Adelanto's immigration court are ongoing during the pandemic, (Soni Decl. ¶ 32), as are deportation proceedings, including for individuals in cohorts or in quarantine. (Pls.'s Supp. at 6 n.2.) As of the drafting of this Order, the Executive Office for Immigration Review ("EOIR") website notes that Adelanto immigration court is open, but that non-detained hearings through May 1, 2020 have been postponed.[5] Attorneys have been informed they can attend Adelanto Immigration Court hearings and make filings without PPE, but in practice have had difficulty filing documents without PPE.[6] (Bell Decl. ¶ 6; Bleckley Decl. ¶¶ 7-14.)

II. LEGAL STANDARD

The purpose of a temporary restraining order is to preserve the status quo and prevent irreparable harm until a hearing may be held on the propriety of a preliminary injunction. See Reno Air Racing Ass'n, Inc. v. McCord, 452 F.3d 1126, 1131 (9th Cir. 2006). The standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction. Lockheed Missile & Space Co. v. Hughes Aircraft Co., 887 F. Supp. 1320, 1323 (N.D. Cal. 1995); see Stuhlbarg Intern. Sales Co., Inc. v. John D. Brushy and Co., Inc., 240 F.3d 832, 839 n.7 (9th Cir. 2011).

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). The Ninth Circuit employs the "serious questions" test, which states "'serious questions going to the merits' and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." Alliance for Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011). "A preliminary injunction is an 'extraordinary and drastic remedy. It should never be awarded as of right." Munaf v. Geren, 553 U.S. 674, 690 (2008) (citation omitted).

[5] https://www.justice.gov/eoir/eoir-operational-status-during-coronavirus-pandemic.

[6] Immigration courts do not have a fully electronic filing system like CM/ECF.

III. DISCUSSION

The Court finds that Plaintiffs are likely to succeed on the merits of one or more of their claims, will suffer irreparable harm as a result of the deprivation of their constitutional rights, and that the balance of equities and public interest heavily weigh in favor of granting a temporary restraining order.

A. Likelihood of Success on the Merits

Plaintiffs are likely to succeed on the merits of their claim that Defendants' COVID-19 attorney-access policies violate their constitutional and statutory rights. (App. at 19.) The Court's MTD Order described the elements of each claim in greater detail, and concluded that the pre-pandemic conditions alleged are sufficient to state a claim. (See generally MTD Order.) The Court need not repeat that analysis here. The present restrictions on attorney access are likely enough to violate Plaintiffs rights, because they are far more severe than the pre-pandemic conditions alleged in the FAC.

Defendants' non-responsiveness to Plaintiffs' factual assertions is telling. First, it took Defendants multiple rounds of briefing and two hearings to state whether there is any definite procedure to access free confidential legal calls and what that procedure is. Even if a procedure exists, Defendants do not rebut Plaintiffs' showing that few detainees have ever accessed a free confidential legal call. (See generally Valdez Decl. I; Valdez Decl. II; Valdez Decl. III ¶ 8 (noting that just 30 visitation room calls have been accommodated in the past two weeks).) The phones in dayrooms are recorded, and therefore are not secure. Nor do Defendants explain why it is reasonable to expect detainees earning about one dollar a day, (Kurichety Decl. II ¶ 5), or their families in the midst of an economic crisis, to fund paid "legal" calls on recorded lines in the middle of their housing unit.[7] Similarly, Defendants admit the "positive acceptance" requirement can be removed, yet they neglect to explain how a detainee or attorney may request this or whether significant numbers of requests have been honored in the past.

On the subject of contact visitation, Defendants also equivocate. Although they recapitulate the ICE guidance in the Valdez Declarations, they belatedly admit that only two contact visits have in fact been allowed since March 13, 2020. (Valdez Decl. ¶ 6.). Defendants also do not address the reality that gloves and eye-gear are difficult to obtain, even assuming GEO provides a mask to the detainee. During the telephonic hearing and in their supplemental filing, Defendants did not deny that GEO has required attorneys to provide their own PPE, including

[7] Assuming a rate of 10 dollars for five minutes, (Torres Decl. ¶ 9), and an average case-preparation time of 10-15 hours, (Bell Decl. ¶ 29), a detainee would spend between $ 1,200 and $ 1,800 dollars on calls to obtain a similar result as that allowed by in-person visits.

masks, for non-contact attorney visits, where the attorney and client are separated by plexiglass and are in separate rooms.[8]

This response is inadequate, and the Court finds Defendants have likely interfered with established, ongoing attorney-client relationships as a result of the measures they have adopted in respect to COVID-19. (MTD Order at 20.) Arroyo v. U.S. Dep't of Homeland Security, 2019 WL 2912848 (C.D. Cal. June 20, 2019). As a result, the represented detainees are likely to succeed on the merits of their claims in the context of the pandemic. The Court also notes Defendants' unchanged DO policies prevent attorneys from contacting their clients' DOs, who are gatekeepers to documentation, identification, and medicine, and who clear medical evaluation visits that would support habeas petitions or other requests for release. (Id. at 21 (also noting attorneys need to contact DOs to alert them of stays of deportation).)

The unrepresented detainees' claims are also likely to succeed. (MTD Order at 19.) Biwot v. Gonzales, 403 F.3d 1094, 1100 (9th Cir. 2005). Plaintiffs' largely unrebutted declarations are persuasive on the subject of the positive acceptance requirement, lack of confidentiality on dayroom calls, difficulty or impossibility of scheduling free confidential calls, and COVID-19 barriers to visitation that prevent detainee access to attorneys who could represent them. (App. at 22-23.)

The Organizational Plaintiffs are likely to succeed on a claim that Defendants' policies violate their First Amendment right to speak with those who may need legal assistance or who have retained their legal services. (MTD Order at 26.) Mothershed v. Justices of the Supreme Court, 410 F.3d 602, 609 (9th Cir. 2005). The communication and visitation bars described above are sufficiently substantiated for temporary relief. Along with new bars mentioned in connection with the Application, the COVID-19 communication hurdles prevent attorneys from consulting with prospective or current clients.

Plaintiffs point to several less restrictive alternatives provided for in Defendants' own policy documents, including Skype and videoconference alternatives to visitation, free calls for indigent detainees, reasonable access to fairly priced telephone services, prompt delivery of telephone messages to detainees, a reliable system for scheduled, confidential legal calls, and email with deportation officers. (Id. at 26-27 (referencing the 2011 Performance Based National Detention Standards ("PBNDS") and protocols implemented at other detention facilities).) To the extent Defendants argue they have already implemented some of these alternatives as a matter of policy, the Court is satisfied that Plaintiffs have established serious questions as to whether the alternatives are available as a matter of practice. All. for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011).

[8] The Court does not pass judgment on the epidemiological wisdom of requiring PPE to enter the facility, even for non-contact visits. Such restrictions may be necessary given the grave danger of a facility outbreak. The Court simply observes the restriction on non-contact visitation also effectively blocks attorney-client communication.

The Court turns now to Defendants' counterarguments. Defendants argue the claims are unlikely to succeed because the Individual Plaintiffs lack standing and have been released. (Opp'n at 11.) The Court rejected this argument in the MTD Order, and need not repeat its reasoning here. (MTD Order at 9-15 (differentiating standing, which is assessed at the time of the commencement of the action, and mootness).) Defendants also ignore that Imm Def and AILA have organizational standing to sue for injunctive relief, even assuming the Individual Plaintiffs do not. (Id. 11-12.)

Next, Defendants argue the attorney Plaintiffs lack standing because their injury is "self-inflicted," because Imm Def has a no-visits policy during the pandemic, (Opp'n at 13), and because attorneys "can purchase [PPE] if they choose," (Opp'n at 9). This argument fails.

First, Imm Def's policy does allow attorney visits with permission from a supervisor, (Soni Decl., Ex. A at 1 ("[Y]ou must get permission from your supervisor and your project's corresponding director in order to deviate from this policy.").) Plaintiffs also attach declarations from attorneys not subject to Imm Def's policy and who cannot reach clients due to Defendants' policies. (Bleckley Decl. ¶¶ 11-13, Ex. B; Hercules-Paez Decl. ¶ 23; Kurichety Decl. ¶¶ 3-4.))

Second, Defendants' argument that the shortage of PPE is a harm caused by third parties, and not by Defendants, misses the point. The only reason the shortage of PPE matters is Defendants' policies or practices, which do not provide for reliable, free confidential legal calls and therefore dictated Plaintiffs' pre-pandemic reliance on in-person visits. Accordingly, the harm alleged is "fairly traceable" to Defendants' policies. City of Los Angeles v. Lyons, 461 U.S. 95, 101–02 (1983) (citations omitted). Although the harm to attorneys and clients has been magnified by the pandemic, it is still fair to say Defendants' own policies caused the harm, not the virus or the shortage in PPE.

Finally, Defendants contend Plaintiffs' claims are unlikely to succeed, because Plaintiffs have not pointed to any prejudice in a detainee's bond or merits proceeding. (Opp'n at 8.) However, prejudice in a bond or merits proceeding is not an element of Plaintiffs' claims. As the Court emphasized in its MTD Order, this case concerns conditions of confinement only. As a result, prejudice in an underlying immigration proceeding is not required to establish standing and is not an element of the right to counsel claim. (MTD Order at 21- 23 (noting the right to counsel begins before any court proceeding, and that Plaintiffs do not seek review of any aspect of their removal proceedings).) In any case, Plaintiffs have made an adequate showing of likely prejudice. Detained immigration proceedings at Adelanto appear to be barreling on, and without reasonable access to attorneys, detainees vulnerable to sepsis and pneumonia from COVID-19 will not be able to petition for parole or habeas relief. Accordingly, Plaintiffs are likely to succeed on the merits of their claims.

B. Irreparable harm, Balance of the Equities, and Public Interest

Turning to the next three factors, Plaintiffs must show they are "'likely to suffer irreparable harm in the absence of preliminary relief[,]'" and demonstrate that "'the balance of

equities tips in [their] favor.'" Hernandez v. Sessions, 872 F.3d 976, 995 (9th Cir. 2017) (quoting Winter, 555 U.S. at 20.). When "the impact of an injunction reaches beyond the parties, carrying with it a potential for public consequences, the public interest will be relevant to whether the district court grants the preliminary injunction." Id. Plaintiffs have met their burden on each remaining element.

Plaintiffs have shown a likelihood of irreparable harm, given the high stakes of immigration proceedings. Plaintiffs claim that without access to counsel, they are likely to face denial of asylum and ultimately to be deported, despite meritorious claims. (App. at 28.) Padilla v. Kentucky, 559 U.S. 356, 373 (2010) ("The severity of deportation. . . underscores how critical it is" for immigrants to have effective counsel). Irreparable harm is also established, because the health of detainees may depend on their ability to petition for release. See M.R. v. Dreyfus, 663 F.3d 1100, 1111 (9th Cir. 2011); see also, Al-Joudi v. Bush, 406 F. Supp. 2d 13, 20 (D.D.C. 2005). The harm to the attorney plaintiffs is of a different order, but is the flip side of the same constitutional coin, and is irreparable. "The deprivation of constitutional rights unquestionably constitutes irreparable injury." Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012) (internal quotation marks omitted).

Similar reasoning supports a finding that the balance of equities tips in Plaintiffs' favor. The Court takes as a given that Defendants are operating in exceedingly difficult circumstances and are doing their utmost to prioritize the health of detainees and staff. However, greater equities accrue to Plaintiffs, for whom health, as well as the ability to remain in the country, avoid persecution, torture, or death, and perhaps remain with their U.S. resident family members, may be at stake. Although a grant of relief requires Defendants to take steps to ensure access to counsel, any administrative burden will be minor based on the limited scope of that relief, which can mirror policies already envisioned by Defendants' own regulations and guidance.

The public interest also favors granting the injunction. As a general rule, "it is always in the public interest to prevent the violation of a party's constitutional rights." Melendres, 695 F.3d at 1002 (quotation omitted). In addition, the public has an interest in the orderly administration of justice and in preventing needless administrative appeals, delay, and expense produced by the denial of access to counsel and by non-adherence to statutory and constitutional rights. (See Opp'n at 20 (noting the importance of enforcing immigration laws).).

No doubt, the difficulty of adhering to such principles inclines with the pandemic's curve. But surely the urgency of access to counsel, and the maintenance of access to courts, increases to the same degree. See Lopez v. Heckler, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required."); Preminger v. Principi, 422 F.3d 815, 826 ("[A]ll citizens have a stake in upholding the Constitution.")

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C. Appropriate Scope of Relief

Plaintiffs seek an order:

1. Requiring that Defendants remove the positive acceptance requirement for all legal telephone calls from immigrants detained at Adelanto;

2. Requiring that Defendants make all legal telephone calls from immigrants detained at Adelanto free of charge;

3. Requiring Defendants to create, implement, and advertise a process by which attorneys and detained immigrants may schedule confidential telephone calls and videocalls within 24 hours of the request, to take place between 8:00 a.m. and 8:00 p.m.;

4. Requiring Defendants to create, implement, and advertise a process by which attorneys and detained immigrants may exchange confidential documents electronically (whether via email or fax);

5. Requiring that all of the above relief be made available to detained immigrants who are quarantined; and

6. Requiring that the Federal Defendants have a system for making available the contact information for detained immigrants' DOs to their legal counsel.

(App. at 29.) Plaintiffs argue that the requested relief is narrowly tailored to the harms identified, and is consistent with ICE's own COVID-19 guidance and CDC guidance for detention facilities. (Id.) Defendants strenuously object to the requested relief, in particular the request to implement a fax or email procedure for confidential attorney communications. (Opp'n at 21.) They contend that the revelation of DO contact information presents only "speculative" benefits to Plaintiffs and poses security risks to the DOs themselves, who may face harassment or worse. (Id. at 22.)

The Court finds relief is warranted on the positive acceptance requirement. Defendants represent that there is already a procedure for removing the requirement for certain numbers. (Valdez Decl. II ¶ 5.) It is clear that in practice significant numbers of detainees and attorneys have not been able to avail themselves of that procedure. Removing the requirement for legal calls is warranted, and would require minimal to no reallocation of Defendants' resources.

The Court also finds that, given the risks and burdens posed by in-person visitation, Defendants must allow free, reasonably private legal calls on unrecorded and unmonitored telephone lines, and must devise a reliable procedure for attorneys as well as detainees to schedule those calls within 24 hours of a request. This relief is narrowly tailored, because Defendants state their policies already allow for a system of free legal calls, and inform the Court

that approximately 21 visitation, asylum, and consular rooms can be repurposed for legal calls. (Valdez Decl. II ¶ 7.) The calls may be scheduled for any time of day or night outside of count and any lockdown. (Valdez Decl. II ¶ 8 (noting "calls may be accommodated at any hour barring unforeseen or emergent issues at the facility" and that count usually takes between 30 and 45 minutes).)

In addition, the Court finds that free unrecorded calls to attorneys should be made available from the phones located within each unit dayroom or common area. Defendants stated during the April 2, 2020 hearing that detainees can already request that a telephone number be associated with their attorney and that calls to that number can be unrecorded and unmonitored. In practice, however, it seems few detainees have successfully navigated the procedure, or been informed of it. Defendants also stated that dayroom phone calls to a short list of legal organizations, consulates, and agencies are provided for free. It should not be overly burdensome to add attorney numbers to that list using existing methods.

Calls from visitation rooms and the dormitory phones should be free, without regard to indigency. (See Valdez Decl. III ¶ 2 (noting that to be considered indigent, a detainee must have less than $15 on her account for ten days and must also request an accommodation).) The Court is concerned that only one third of detainees have been deemed indigent and requiring indigent status during the pandemic is overly burdensome. Free dormitory and scheduled calls are necessary to supplement previously unlimited in-person visits.

The Court is also concerned that it is difficult for attorneys and clients to exchange confidential documents and obtain signatures during the pandemic. The Court adopts Defendants' proposal: the creation of a drop box for detainee correspondence outside the front door of the facility, permitting attorneys, their agents, or couriers to leave envelopes without triggering the PPE requirement to enter Adelanto. (See Dkt. No. 143 at 4-5.) Defendants shall deliver documents from this drop box to detainees daily. Plaintiffs can include a prepaid return envelope for the detainee to return documents requiring signature. In such cases, Defendants will be responsible for ensuring return envelopes are placed in the mail the same day, or Plaintiffs may propose and Defendants shall accommodate a method for attorneys, their agents, or couriers to pick up sealed envelopes. For documents that require prompt signature or delivery, such as G-28s,[9] the use of fax or email, mediated by ICE or GEO staff, may still be warranted, as contemplated by the PBNDS.

Finally, the Court finds that measured disclosure of DO contact information is reasonable under the unusual circumstances of the pandemic. Defendants raise the specter of DO harassment, but do not rebut evidence that DOs in other regions have provided this information, (Tharayil Declaration, Dkt. No. 138-2, Ex. A; Soni Decl. ¶¶ 38-40; Voigt Decl. ¶ 4; Kavanagh Decl. ¶¶ 1-4). Reliable attorney-DO contact is necessary to secure the benefits of representation,

[9] ICE Officers at Adelanto require original signatures on individuals' G-28 forms before they can be represented by an attorney and before the attorney can speak to a DO about the immigrant's case. (Kurichety Decl. ¶¶ 8-9.)

because many cases call for translation services and medical evaluations, which require DO approval. Given the conditions of DO bureaucracy—the constantly shifting case assignments and duties—it is reasonable for Adelanto DOs to provide the numbers to their employer-provided mobile phones and a phone tree, which may include last names and first initials only. These telephone numbers shall be disclosed only to attorneys and their staff who represent Adelanto detainees in legal proceedings. The numbers are not to be disclosed to any third parties and shall be used only in connection with legal representation. In addition, Defendants must create an anonymized DO email system along the lines of what Plaintiffs suggest in their supplemental filing. (Dkt. No. 142, at 2-3 (proposing anonymized email addresses and the use of email forwarding to individual DOs in order to protect email confidentiality, and proposing modification of the forwarding rules as DO casework shifts)).

IV. CONCLUSION

Plaintiffs' application for a temporary restraining order is GRANTED, as follows:

1. Defendants shall promptly remove the positive acceptance requirement for telephone numbers provided by Plaintiffs and for any other attorney or legal organization that so requests.

2. Defendants shall create, implement, and advertise a process by which both attorneys and Adelanto detainees may initiate requests for free confidential telephone calls from the 21 visitation rooms available for that purpose. Defendants should schedule most calls between 8 a.m. and 8 p.m., and attorneys should give Defendants 24 hours' notice.

3. Given the limited number of visitation rooms, calls made to designated attorney numbers from telephones located in the common areas of the housing units shall be unrecorded, unmonitored, and free of charge. Defendants shall create, implement, and advertise a process by which attorneys may so designate their numbers. Requests from attorneys to designate numbers included on their Attorney Licensee Profiles on the California State Bar website, or out-of-state equivalent, must be approved within 24 hours. All other requests should be ruled on within three days.

4. Defendants shall create a drop box for detainee correspondence outside the front door of the facility, permitting attorneys (or couriers) to leave envelopes without triggering the PPE requirement to enter Adelanto.

5. Defendants shall continue their stated efforts to promptly convey messages left by attorneys with Adelanto lobby staff to have particular detainees call them;

6. Contact and non-contact attorney visits, including with medical evaluators and translators approved by regular Deportation Officer ("DO") channels, shall be allowed at Adelanto, subject to the most current ICE guidance.

7. The above relief shall be available to detained immigrants who are quarantined or cohorted.

8. Defendants shall provide numbers to DO employer-provided mobile phones and a phone tree, which may include last names and first initials only. These telephone numbers shall be disclosed only to attorneys and their staff who represent Adelanto detainees in legal proceedings. The numbers are not to be disclosed to any third parties and shall be used only in connection with legal representation. Defendants shall also develop an anonymized email system for Adelanto DOs, or show cause on **April 20, 2020**, why such an email system cannot be created.

9. DOs shall make every effort to respond within 24 hours to requests to facilitate attorney visits with accompanying medical evaluators and translators, to requests for confirmation of receipt of documents relevant to the pandemic, and to requests regarding detainees who will be released on bond or humanitarian parole.

The TRO shall expire on **April 25, 2020**. A telephonic hearing is set for **April 24, 2020** at 2:00 p.m. Defendants are ORDERED to show cause on before **April 20, 2020** why the TRO should not be converted into a preliminary injunction that shall last for the duration of the COVID-19 pandemic. Plaintiffs may file a response on or before the opening of business on **April 23, 2020**.

To obtain the telephone number for the hearing counsel are directed to e-mail the courtroom deputy clerk at maynor_galvez@cacd.uscourts.gov

IT IS SO ORDERED.